

Witness Name:

Statement No.:

Exhibits:

Dated:

UK COVID-19 INQUIRY

WITNESS STATEMENT OF JAN SAVAGE

I, Jan Savage, will say as follows: -

Role of the SHRC generally

Legislation and other frameworks

1. The Scottish Human Rights Commission is Scotland's National Human Rights Institution (NHRI). Established by the Scottish Commission for Human Rights Act 2006, and operational since 10 December 2008, it fulfils a broad statutory mandate to promote and protect people's rights and hold government and public bodies to account for their human rights obligations.
2. The Commission meets its general duty by publishing or otherwise disseminating relevant information or ideas, providing general advice or guidance, conducting research and providing education or training and recommending changes to law, policy and practice. Powers to protect human rights are limited to a power to intervene in relevant civil court cases; and to conduct inquiries into the policies and practices of Scottish public authorities.
3. The Commission is an independent public body accountable to the Scottish Parliament. It has a range of specific accountabilities arising from this, including requirements to comply with all general Scottish public sector responsibilities and relevant legislation in areas such as freedom of information, equality, public procurement, data protection and others.

4. The Commission is an A-Status NHRI within the United Nations (UN) human rights system. This accreditation is based on the Paris Principles, which set out internationally agreed minimum standards that NHRIs must meet to be considered credible.
5. The Paris Principles require NHRIs to be independent in law, membership, operations, policy and control of resources. They also require that NHRIs have a broad mandate; pluralism in membership; broad functions; adequate powers; adequate resources; cooperative methods; and engage with international bodies. These Principles require (amongst other things) that the Commission is independent of the Scottish Government and Parliament in the exercise of its functions. In 2021, the Commission was awarded "A Status" accreditation for a third time.

Composition and Structure

6. Further provisions concerning the composition of the Commission, and the appointment of Commissions are contained in Schedule 1 of the Act. Paragraph 1 provides for a Chairperson appointed by His Majesty on the nomination of the Scottish Parliament. Other members, not exceeding four in number, are directly appointed by the Parliamentary Corporation (SPCB), following competitive public recruitment.
7. Paragraph 5, Schedule 1 of the Act, requires that members hold office for a period not exceeding 8 years at the time of appointment, with no possibility of reappointment and for a period determined by the SPCB. The Chair is a full-time position, whilst other members are part-time.
8. Members of the Commission meet regularly to set the strategic direction of the Commission and oversee delivery of its Strategic and Operational Plans. Commissioners are also accountable for ensuring effective and efficient use of Commission resources in delivering the Strategic Plan.
9. The Chairperson is the head of the Commission and is supported in the daily work by a management team. Operational and financial decisions are delegated to the executive team through a Scheme of Delegation.

Relationship with EHRC

10. Whereas most states have only one NHRI, the UK is unusual in having three: the Equality and Human Rights Commission (EHRC); the Northern Ireland Human Rights Commission (NIHRC); and the Scottish Human Rights Commission.
11. The respective mandates of SHRC and EHRC are set out in paragraphs 3 - 6 of the current Memorandum of Understanding (JS/1-INQ000). Whereas the Scottish Human Rights Commission holds a broad mandate to promote and protect human rights for everyone in Scotland, the EHRC holds a human rights mandate in Scotland solely in relation to matters of law and policy that remain reserved to the UK Parliament.
12. While our mandate is broadly defined, our enforcement powers are limited to the devolved sphere. Furthermore, we have typically deferred to EHRC in reserved matters in order to prevent duplication and overlap. This means we have historically directed our efforts towards the devolved institutions; the Scottish Parliament, Scottish Government and Scottish public authorities.
13. In addition to their status as an NHRI, the EHRC are Scotland's equality regulator, as they are for the whole of Great Britain. This lends a distinct focus to their work on discrimination and disproportionate impacts. Like most NHRIs, the Scottish Human Rights Commission examines discrimination through the lens of the international human rights framework such as the prohibition of discrimination set out in Article 14 of the European Convention of Human Rights. As the equality regulator, the EHRC will typically analyse discrimination using the relevant domestic provisions, namely the Equality Act 2010.
14. There are some important technical distinctions between discrimination in the human rights context and discrimination in terms of the Equality Act. In particular, the Equality Act features a closed list of nine 'protected characteristics', being special characteristics or statuses which must not be used as grounds for less favourable treatment. In contrast, Article 14 ECHR presents an open list of statuses, framing discrimination in much wider terms.

15. This technical difference has far-reaching implications for the work of NHRIs as compared to that of equality bodies. For instance, an NHRI is unlikely to use 'protected characteristics' as the basis for data collection because the most relevant categorisation of rights-holder will often vary from one rights setting to another. In the context of the pandemic, the Commission frequently addressed issues relating to disproportionate impacts on certain groups, for example people experiencing poverty, but these groups did not always map on to the protected characteristics of the Equality Act.
16. Similarly, the power to enforce and uphold the Public Sector Equality Duty (PSED) rests exclusively with the EHRC and the Commission would not offer comment on matters relating to compliance with the PSED (including the publication of Equality Impact Assessments).

The Commission's work between 11 June 2009 and 21 January 2020

17. The Commission operates under a Strategic Plan. According to Section 7 (1) of the Act, the SHRC must submit to the Parliament a plan (referred to as a "strategic plan") every 4 years, detailing out information on how it intends to fulfil its mandate within the period specified, with its cost estimates. During the period 11 June 2009 – 21 January 2020 we have carried out three Strategic Plans. The Commission is currently working towards its fourth strategic plan, 2020-2024. These plans cover a range of priorities aimed at promoting and protecting human rights. These include activities aimed at building a human rights culture and increasing accountability for the full range of human rights, including economic, social and cultural rights. During this timeframe the Commission did not identify as a strategic priority work on pandemic planning, preparedness and resilience. Accordingly, we do not hold any analysis, nor can we comment on the state of the UK's engagement with human rights on those matters. We did not initiate any discussions or correspondence with government or local government on these matters, nor were we actively engaged by them.
18. During the pandemic, we focused on the impacts of Covid-19 in relation to devolved areas, namely health and social care, justice and policing, prisons and

places of detention, economic, social and cultural rights, and economic recovery policy.

Impact and lessons learned

19. From the outset of the Commission's operation, we have sought to increase awareness and understanding of the importance of building human rights standards into the policies and practices of all public authorities in Scotland, including local and central government i.e. taking a human rights based approach. While we did not focus on the particular issue of emergency preparedness, a human rights based approach applies to that area as much as any within the devolved sphere. There have been significant steps taken by the Scottish Government to employ a human rights based approach, in areas such as social security and health and social care. However there has not been a consistent mainstreaming of a human rights based approach in all areas which touch upon human rights. Had a human rights based approach been properly and consistently embedded, we believe that decisions made around the pandemic would have been able to ensure they took proper account of the impacts of decisions on the human rights of everyone and, in particular, those most at risk of breaches to their human rights. In the event, when the pandemic arose, there was at least an awareness that there would be significant impacts on human rights, however, the opportunity to consider that took place in a patchy manner and, at times, after the fact.
20. In general, our assessment is that the Scottish Government recognised that the measures being taken in response to the pandemic had significant impacts on a range of human rights. In the early days of the pandemic, we saw a marked increase in requests for our involvement from the Scottish Government. What is not particularly clear to us is the weight the Scottish Government placed on our analysis, as Scotland's National Human Rights Institution, and how they then used that analysis to inform policy making; in many instances our advice or input was requested but did not form the basis of an ongoing dialogue, which could have been beneficial.

21. A related reflection is that, throughout the pandemic, we had contact with a number of Scottish Government departments and officials and many initial discussions involved the Commission setting out the relevant human rights framework and explaining how human rights were relevant to a particular situation. It struck us that there could have been better mainstreaming or cascading of human rights across different areas of the Scottish Government, to create a wider understanding of how different peoples' rights were being impacted by the pandemic. It is not clear to us that the Scottish Government did this work, and if they did, they did not communicate it with us.
22. The Commission's work during the pandemic was concerned with a wide range of groups who may have experienced particular human rights issues; these groups include but are not limited to those with a protected characteristic under the Equality Act, and in future we believe a more expansive view of vulnerable groups, including those with a protected characteristic, would be beneficial.
23. In evidence to the Equalities and Human Rights Committee on 25 February 2021, Judith Robertson provided the following reflection, which neatly summarises our current view, on whether the Scottish Government had undertaken sufficient equalities and human rights impact assessments of legislation and policy changes:
- "My honest answer to is that, on balance, it has been patchy. There has been some good practice. Practice has improved and people have become more cognisant as we have gone through the process. In most of the key areas that we engaged in – actually, it was probably all of them – the response that we had was, at the very least "we need to know about this and consider it more".On balance, I would not say that there has been a systematic, thorough and coherent equalities and human rights impact assessment of every decision that has been made in relation to the pandemic – I could not say that, to be honest. However, in broad terms, consideration has been given to human rights, although obviously more could be done."*

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed

Personal Data

Dated: 31/05/2023

